

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN V. GROSS,

Plaintiff,

v.

GARY BOUGHTON, et al.

Defendants.

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ORDER

Case No. 16-cv-759-wmc

On November 16, 2016, I entered an order granting plaintiff John V. Gross' request to proceed *in forma pauperis* and assessed him the full \$350 filing fee due by December 9, 2016. Now plaintiff has filed a letter, dkt. 5, which I will construe as a motion to amend the November 16 order to allow plaintiff to use 20% of plaintiff's regular account to pay a portion of the initial partial payment and then pay the remainder of the initial partial payment from plaintiff's release account. I will deny plaintiff's motion for the following reasons.

The language in 28 U.S.C. § 1915(b)(1) suggests that prison officials are required to use a prisoner's release account to satisfy an initial partial payment *if no other funds are available*. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, the statute governing proceedings *in forma pauperis* does not give courts the authority to direct prison officials to take a specific percentage from plaintiff's regular account and the remainder of the balance from plaintiff's release account. Instead, if funds are available from plaintiff's regular account to pay all or some of the assessed initial partial payment, prison officials must first take that amount before using funds from plaintiff's release account.

Because plaintiff's deadline to submit the \$350 filing fee has passed, I will give plaintiff an enlargement of time, until January 6, 2017, to pay the \$350 filing fee.

ORDER

IT IS ORDERED that,

1. Plaintiff John V. Gross's motion to amend the November 16, 2016, order regarding the initial partial filing fee assessed in this case, dkt. #5, is DENIED. If plaintiff does not have enough money to pay the \$350 filing fee from his regular account, plaintiff should arrange with prison authorities to pay the remainder from his release account.

2. Plaintiff may have until January 6, 2017, to submit the \$350 filing fee. If, by January 6, 2017, plaintiff fails to make the initial partial payment or show cause for failure to do so, plaintiff will be held to have withdrawn this action voluntarily and the case will be closed without prejudice to plaintiff filing this case at a later date.

Entered this 15th day of December, 2016

BY THE COURT:

/s/  
PETER OPPENEER  
Magistrate Judge